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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,342	01/14/2002	Sophie Helene Vayrette	05725.1013-00	6740

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EXAMINER

RAMANA, ANURADHA

ART UNIT	PAPER NUMBER
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3732

10

DATE MAILED: 01/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/043,342

Applicant(s)

VAYRETTE, SOPHIE HELENE

Examiner

Anu Ramana

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-95 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 10, 13-65, 67 and 70-89 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 7, 9, 11, 66, 68, 69 and 90-95 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

In response to an Election/Restriction Requirement, Paper No. 7, Applicant elected species VII (Figure 4). New claims 90-95 read on a nonelected species and according are withdrawn from examination.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 13-15, 18, 23, 24, 26, 34-39, 48-49, 60-65, 70-72, 75, 79, 81 and 89 are rejected under 35 U.S.C. 102(b) as being anticipated by Street (US 6,017,351).

Regarding claims 1-3, 5-6, 18, 23-24, 26, 34, 60-62, 64-65, 75, 79, 81 and 89, Street discloses a hand-held, permeable, cosmetic abrasive pad or envelope formed as a mitt or “mitten” for exfoliating skin, made by permanently attaching first and second segments, 110 and 112 of nonwoven fibrous material along their edges, wherein the surface of one segment is mildly abrasive (first roughness) and the surface of the other surface is more aggressively abrasive (second roughness) (Figure 12, col. 3, lines 31-67, col. 4, lines 1-7, col. 9, lines 37-67 and col. 10, lines 1-4). The first and second segments, 110 and 112, of the Street device are inherently made of different material.

Regarding claims 4 and 63, the Street device is capable of being used to apply a product to a skin surface.

Regarding claims 13-15 and 70-72, Street discloses that the envelope 100 is made from polyester fibers that are thermoplastic, polyolefin fibers.

The method steps of claims 35-39 of providing the Street device; massaging a portion of the body to be treated with a first outer face 110 and second outer face 112; inserting a hand into the opening of the Street device; and changing the position of the Street device with respect to

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the hand between massaging with the first outer face and the second outer face are inherently performed during normal use of the Street device.

The Street device inherently performs the method steps of 48 and 49. Regarding claim 49, Street discloses that two different abrasive exterior surfaces are provided so that the user can select and use either side for scrubbing skin (col. 3, lines 53-58 and col. 9, lines 50-57).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 10, 19-22, 67 and 76-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Street.

Regarding claims 8, 10 and 67 Street discloses a hand-held cosmetic abrasive pad for exfoliating skin (see discussion for claim 1).

Although Street does not disclose that the pad is shaped as a glove, it would have been obvious to one of ordinary skill in the art at the time of the invention to have made the hand-held Street device in the shape of a glove since it has been held that mere changes in shape are a matter of obvious design choice absent any persuasive evidence that the particular shape or configuration is significant. *In re Dailey*, 149 USPQ 47 (CCPA 1976).

Regarding claims 19-22 and 76-78, although Street does not disclose a specific thickness of the first and second segments, the thickness of the nonwoven fibrous material or composite used to make articles such as gloves must have an appropriate thickness to ensure properties such as breathability, flexibility and permanence.

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide first and second segments having thicknesses in a range 400 micrometers to about 1000 micrometers in the Street device as a matter of obvious design choice based on the intended use of the device since it has been held that discovering an optimum value

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of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claims 16-17 and 73-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Street in view of Snyder et al. (US 4,319,956).

Street does not disclose that the nonwoven material has thermoplastic and natural fibers such as cellulose fibers.

Snyder et al. teach a nonwoven material made of a blend of synthetic and natural fibers for improved wet properties such as tensile strength (col.3, lines 3-17).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the Street device of a nonwoven material that is a blend of thermoplastic and natural fibers, as taught by Snyder et al., for improved tensile strength.

Claims 25, 27-29, 40-42, 45, 47, 50-52, 55-59 and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Street in view of Ginger et al. (US 4,347,931).

Regarding claims 25 and 80, Street does not disclose that device 100 is made by heat sealing first and second layers, 110 and 112.

Regarding claims 27-29, 50-52 and 55-59, Street does not disclose that the first and second surfaces are impregnated with at least one product such as a cosmetic or a care product.

Ginger et al. teach a suitably shaped envelope formed by heat sealing first and second layers 14 and 15 wherein the first and second layers are configured to be impregnated with a product which is a cosmetic or a care product (Figure 5, col. 4; lines 3-14, lines 19-29, lines 66-68 and col. 5, lines 1-6).

Accordingly it would have been obvious to one of ordinary skill in the art at the time of the invention was made to have attached layers 110 and 112 of the Street device, by heat sealing as taught by Ginger et al., for the purpose of permanent attachment of layers 110 and 112.

Regarding claim 58, Ginger et al. teach a mitt with at least one outer surface impregnated with a desired material such as cosmetic materials in a sealed pack, prior to use. Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to

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provide the Street device in a sealed pack, as taught by Ginger et al., so that the surfaces are impregnated by a person other than the user.

The method steps of claims 40-42, 45 and 47 are performed during normal use of the Street-Ginger device.

Claims 27-33, 40-46, 50-57, 59, 82 and 83-88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Street in view of Gruenbacher et al. (US 6,508,602).

Street does not disclose a system with the device 100 and a product for treating a keratinous surface.

Gruenbacher et al. teach an applicator such as a glove or mitt 10 made of a nonwoven material with a front outer surface 31 and a back outer surface 33 wherein the surfaces 31 and 33 are configured to be impregnated by the same or different products such as lotions, creams to a skin surface (col. 3, lines 40-42 and lines 53-67 and col. 4, lines 1-15, col. 5, lines 41-53, col. 6, lines 33-42, col. 12, lines 61-64 and col. 13, lines 5-6). Gruenbacher et al. also teach containment of the products in reservoirs 30 and 35 in the applicator 10.

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to configure the first outer face 110 of the Street device to be impregnated with one or more products such as a skin cream or a skin cleansing product, as taught by Gruenbacher et al., for the dual purpose of cleaning and soothing.

The method steps of claims 40-46 are performed during normal use of the Street-Gruenbacher et al. device for the purpose of scrubbing or cleaning and soothing (application of a cream or lotion).

Response to Arguments

Applicant's arguments submitted under "REMARKS" in Paper No. 9, filed on October 6, 2003, have been considered but are not persuasive.

Applicant's arguments with respect to the Street reference not disclosing an envelope shaped as a mitt are not persuasive since Street discloses an envelope or a mitt (Figure 12), the term "mitt" being a well known abbreviation for mitten.

Applicant's arguments with regard to the "obvious shape" do not overcome the rejections applied, since the applicant has not provided any convincing showing that the different shapes,

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i.e., glove or mitten, are anything more than an obvious design choice as asserted by the examiner.

Applicant has not provided any showing that the limitation of a "glove and a mitten" is "critical". In re Cole, 140 USPQ 230 (CCPA 1964); In re Kuhle, 188 USPQ 7 (CCPA 1975); In re Davies, 177 USPQ 381 (CCPA 1973). Applicant clearly suggests that the limitation "glove and a mitten," is not critical, i.e. "Practically any shape that is suitable for a user to insert his hand to use the envelope ... is within the scope of the invention" (see applicant's specification page 10, lines 10-12). **Mere arguments by counsel cannot take the place of evidence.** In re Cole, 236 F.2d 769, 773, 140 USPQ 230, 233 (CCPA 1964); In re Walters, 168 f.2d 79, 80, 77 USPQ 609, 610 (CCPA 1948); et al.

Furthermore, it is noted that the rationale to modify or combine the prior art does not have to be expressly stated in the prior art; the rationale to modify may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or **legal precedent established by prior case law**. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's attention is specifically directed to the following patent.

Moore (US 5,441,355): col. 3, lines 7-12 and Figures 3, 10, 16 and 20.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (703) 306-4035. The examiner can normally be reached Monday through Friday between 8:30 am and 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at (703) 308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-2708 for regular communications and (703) 308-2708 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

AR *Anu Ramana*
December 24, 2003


EDUARDO C. ROBERT
PRIMARY EXAMINER